IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4096 OF 2005

Marathi Patrakar Parishad & Anr. : Petitioners

V/s.

Shri Ramprasad S. Khandelwal & Ors. : Respondents

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Dr.V.K.Choudhary for the petitioners.

None present for the respondents.

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CORAM : S.A. BOBDE, J.

June 28, 2005.

P.C.:

1. The petitioner no.1, which claims to have been in existence as "Akhil Bharatiya Marathi Patrakar Parishad", has challenged the order of the Joint Charity Commissioner, Pune Region, dated 24.5.2005. By the impugned order, the Joint Charity Commissioner has entertained a revision under section 70A of the Bombay Public Trusts Act, 1950 at the instance of the respondents and held that the change in the name of the trust from "Marathi Patrakar Parishad" to "Akhil Bharatiya Marathi Patrakar Parishad" has been wrongly accepted by the learned Joint Charity Commissioner.

2. It appears that one person by name Rajabhau Shinde submitted the change report on 15.10.2001 stating therein that the Special General Body Meeting was called at Nandurbar on 25.12.1977 in which it was unanimouslay decided to change the name to Akhil Bharatiya Marathi Patrakar Parishad from Marathi Patrakar Parishad. Alongwith the change report, a copy of the notice dated 25.12.1977, copy of the said resolution, a copy of the old constitution and a copy of the Schedule 'I' were also filed. Certain affidavits of certain other persons were also filed. It appears that the Joint Charity Commissioner passed an order apparently on the basis of certain discussion which was held by the Joint Charity Commissioner in his chamber vide para 10 of the order of the Joint Charity Commissioner. In the impugned order, the Joint Charity Commissioner noted that there have been several proceedings, including proceedings under section 41B of the Bombay Public Trusts Act for removal of the trustees and the name of the trust has been shown as Marathi Patrakar Parishad. From a reading of the judgement, the Joint Charity Commissioner has concluded that no change report whatsoever has been filed from 1972 to 2000. Further, the Joint Charity Commissioner has found that there is not even a whisper about the change in the name of the trust. As a matter of fact, the Joint

Charity Commissioner has disbelieved the affidavits and copies of the resolutions, particularly since the original record has not been produced. In these circumstances, the finding of the Joint Charity Commissioner as to whether there was any credible evidence regarding the change of name being a pure question of fact, I am not inclined to interfere with the exercise of jurisdiction of this Court under Article 227 of the Constitution of India.

3. Dr.Choudhary, learned counsel for the petitioners, next contended that the revision could not have been entertained at the instance of persons who are not members of the trust and do not have any interest in the trust. This submission cannot be accepted in view of the nature of revisional powers conferred on the Charity Commissioner under section 70A which reads as follows:-

> **"70A. Charity Commissioner to call for and examine records and proceeding before Deputy or Assistant Charity Commissioner**
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> (1) The Charity Commissioner may in any of the cases mentioned in section 70, either suo motu or on application call for and examine the record and proceedings of such

cases before any Deputy or Assistant Charity Commissioner for the purpose of satisfying himself as to the correctness of any finding or order recorded or passed by the Deputy or Assistant Charity Commissioner and may either annul, reverse, modify or confirm the said finding or order or may direct the Deputy or Assistant Charity Commissioner to make further inquiry or take such additional evidence as he may think necessary or he may himself take such additional evidence.

Provided that the Charity Commissioner shall not record or pass any orders without giving the party affected thereby an opportunity of being heard.

(2) Nothing in sub-section (1) shall entitle the Charity Commissioner to call for and examine the record of any case,--

(a) during the period in which an appeal under section 70 can lie against any finding recorded by the Assistant or Deputy

Charity Commissioner in such case, or

(b) in which an order has been passed either in an appeal made under section 70 or 71 or on an application under section 72."

Obviously, there is power to reverse the order suo moto or on an application.

4. In this view of the matter, the petition is hereby dismissed. The trust shall, of course be at liberty to change its name, in accordance with law, in future.

5. The petition is dismissed.

S.A. BOBDE, J.